

1 JOSEPH P. RUSSONIELLO (SBN 44332)  
 2 United States Attorney  
 2 JOANN M. SWANSON (SBN 135879)  
 3 Chief, Civil Division  
 3 JONATHAN U. LEE (SBN 148792)  
 4 Assistant United States Attorney

5 450 Golden Gate Avenue, 9th Floor  
 5 San Francisco, California 94102  
 6 Telephone: 415-436-6909  
 6 Facsimile: 415-436-6748  
 7 Email: jonathan.lee@usdoj.gov

8 IN THE UNITED STATES DISTRICT COURT  
 9 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
 10 SAN FRANCISCO DIVISION

11 UNITED STATES OF AMERICA,

12 Plaintiff,

13 v.

14 CALIFORNIA INSURANCE GUARANTEE  
 15 ASSOCIATION,

16 Defendants.

E-filing

ORIGINAL  
 FILED  
 JUN 27 2008  
 RICHARD W. WIEKING  
 CLERK, U.S. DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA

JCS

No. 08-cv-104

COMPLAINT OF THE UNITED  
 STATES

18 The plaintiff, United States of America, for its Complaint against the California Insurance  
 19 Guarantee Association alleges as follows:

20 1. The United States brings this civil action to recover the costs of health care provided to a  
 21 United States Armed Services veteran referred to herein as Veteran John Doe, at the  
 22 United States Department of Veterans Affairs Medical Center ("VAMC") in Loma Linda,  
 23 California, between December 29, 2000 and the present. This treatment totals at least  
 24 \$145,037.59 and will continue to grow as Veteran John Doe seeks additional treatment.  
 25 Veteran John Doe was employed by Select Home Health Services ("Select") as a patient  
 26 home service provider when he suffered injuries to his upper extremities, psyche and  
 27 heart during a dog attack in March 1991. His employer's workers compensation insurer,  
 28 Superior National, became insolvent in 1992. California Insurance Guarantee

COMPLAINT

1 Association, an entity created and controlled by the state of California to establish and  
2 maintain a fund from which insureds can obtain financial assistance in the event their  
3 insurers become insolvent, assumed Superior National's insurance policy obligations  
4 upon its insolvency.

5 2. JURISDICTION: This Court has jurisdiction over this matter pursuant to Title 38 U.S.C.  
6 § 1729, which permits the United States to sue responsible third parties to recover the  
7 costs of health care services provided by the Department of Veterans Affairs.

8 3. Title 38 U.S.C. § 1729(a)(1) provides as follows:

9 Subject to the provisions of this section, in any case  
10 in which a veteran is furnished care or services  
11 under this chapter [38 USC §§ 1701 et seq.] for a  
12 non-service-connected disability described in  
13 paragraph (2) of this subsection, the United States  
14 has the right to recover or collect reasonable charges  
15 for such care or services (as determined by the  
Secretary) from a third party to the extent that the  
veteran (or the provider of the care or services)  
would be eligible to receive payment for such care  
or services from such third party if the care or  
services had not been furnished by a department or  
agency of the United States.

16 4. Title 38 U.S.C. § 1729(a)(2) further provides in part that:

17 Paragraph (1) of this subsection applies to a non-service-connected  
18 disability...(A) that is incurred incident to the veteran's employment  
19 and that is covered under a workers' compensation law or plan that  
provides for payment for the cost of health care and services  
provided to the veteran by reason of the disability.

20 5. VENUE: Venue is proper in this Court pursuant to 28 U.S.C. § 1331(b).

21 6. INTRADISTRICT ASSIGNMENT: Pursuant to Civil Local Rule 3-5, this action is  
22 properly assigned to the San Francisco Division of this Court because a substantial part of  
23 the events giving rise to this action occurred in San Francisco, California, namely the  
24 final order of the Worker's Compensation Appeals Board denying plaintiff's right of  
25 reimbursement under controlling federal law was issued in San Francisco.

26 7. Defendant California Insurance Guarantee Association ("CIGA"), is an entity of unknown  
27 organization created by the California legislature to establish and maintain a fund from  
28 which insureds can obtain financial assistance in the event their insurers become

1 insolvent.

2 8. Beginning on or about March 7, 2001, Veteran John Doe, a veteran and an employee of  
3 Select, was treated at the VAMC in Loma Linda, California for non service-connected  
4 conditions and illnesses, and his course of treatment has continued to the present.

5 9. As a Select employee, Veteran John Doe was covered by Select's workers compensation  
6 plan with Superior National for medical and hospital benefits. CIGA succeeded to  
7 Superior when Superior became insolvent.

8 10. Because of such coverage, the VA timely submitted bills to Select and CIGA for  
9 approximately \$145,037.59. CIGA owes plaintiff the full amount of the billed amount.

10 11. As of the date of this Complaint, no part of the VA's claim has been paid because CIGA  
11 disputes any liability based on provisions of the California Insurance Code.

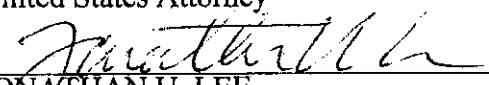
12 12. The United States has complied with the procedural prerequisites for suit set forth in 38  
13 U.S.C. § 1729(b)(2)(B), including providing notice to Veteran John Doe by certified mail  
14 dated January 30, 2008, of the intention of the United States to institute legal proceedings  
15 under section 1729.

16 WHEREFORE, the plaintiff, United States of America, prays that the Court enter judgment  
17 in its favor in the amount according to proof but no less than \$145,037.59, plus interest from the  
18 date of judgment as provided by law, together with the costs of this action as determined by the  
19 Court following the trial of this matter.

20 Respectfully submitted,

21 JOSEPH P. RUSSONIELLO  
United States Attorney

22 Date: June 27, 2008

  
23 JONATHAN U. LEE  
24 Assistant United States Attorneys  
25 Attorneys for the United States of America